

September 21, 2001. The inventor also establishes that the Malme provisional application 60/223,419, (a copy attached as exhibit A), filed on August 7, 2000 is simply a marketing document outlining a business plan. Having compared the Malme provisional application 60/223,419 with the Malme published patent application 2002/0019802, the inventor, who is a person with at least ordinary level of skill in the art, determined that the Malme provisional application 60/223,419 in no way resembles and does not provide support for the text and figures in the Malme published patent application 2002/0019802 relied upon in the Examiner's rejection. Indeed, the numerous paragraphs and figures from the Malme published patent application 2002/0019802 are not present or supported in the Malme provisional. Thus, priority claim cannot be relied on by the Examiner, and the effective filing date of the Malme published patent application 2002/0019802 is September 18, 2001, three days prior to the filing date of the above-identified application.

The inventor provides appropriate documentary evidence of his conception prior to September 18, 2001 in Exhibits B and C and of his diligence in working to constructively reduce to practice the invention recited in at least claims 11, 16, 21, and 25 from prior to September 18, 2001 up to the filing of the above-identified application on September 21, 2001, in Exhibits D and E. Thus, the Malme published patent application 2002/0019802 is not prior art.

Even if Malme was prior art, it fails to disclose all of the features recited in the claims. To establish that a claim is anticipated, the Examiner must point out where each and every limitation in the claim is found in a single prior art reference. *Scripps Clinic & Research Found. v. Genentec, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991). Every limitation contained in the claims must be present in the reference, and if even one limitation is missing from the reference, then it does not anticipate the claim. *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565 (Fed. Cir. 1986).

Malme describes a virtual utility manager ("VUM") 110 that provides aggregation and liquidation of curtailment energy assets. The virtual utility manager receives capacity and energy from customers who are willing to curtail energy usage when market prices are high. As explained in [0043], the "virtual utility manager provides the energy to the wholesale energy markets, thus, functions as a generation clearinghouse. Nevertheless, the potential to provide energy in times of high demand and limited supply closely replicates the abilities of a conventional utility."

The VUM receives curtailment energy commitments from energy consumers or load-supplying entities (LSEs) who have executed load curtailment contracts with energy consumers and who want to market their curtailment assets. A fundamental requirement and underlying assumption in Malme is that the VUM 110 has "curtailment energy commitments from energy consumers or load-supplying entities (LSEs) who have executed load curtailment contracts with energy consumers." See [0012]. The entire operation of Malme's system is founded on these contracts already being in place: "If market conditions exists such that either by the trading exchanges 160 or the ISOs 120 desire to request energy consumers to perform contracted energy curtailment, the VUM electronically receives the requests and automatically notifies the energy consumers 154." See [0054].

Indeed, the notification module in the VUM only notifies the LSE or energy consumer that has executed curtailment contracts and provided them to the VUM: "When demand approaches the available supply, prices for energy dramatically escalates. During such energy spikes, an ISO 120 or a trading desk 260 may decide to implement their executed curtailment contracts." See [0056]. The notification module 422 in the VUM, based on those contracts, alone determines which LSO or energy consumer will be notified. See [0082]. The contract-

based technology in Malme is also apparent in that the aggregate logic unit aggregates “individual curtailment contracts into curtailment amounts saleable on the trading exchanges 160 or to trading desks,” see [0087], and given the existence of a contract logic unit 438 that generates curtailment contract forms, see [0089].

Another important aspect of Malme is that the curtailment contracts and notifications are provided only to LSE 140 and “energy consumers” 150. But the energy consumers that Malme is referring to are manufacturing businesses that have known significant electricity demands and often the ability to generate there own electricity. See for example [0103-0104]: “Each load-supplying entity 140 has a plurality of energy consumers 110 associated with the LSE 140....The contract terms include the information on the price sharing with the LSE 140 and whether a curtailment is mandatory or voluntary. A consumer 150 has a fixed cost associated with any curtailment management strategy. For example, the energy consumer 150 knows the cost associated with running of an on-site generator or the economic loss associated with shutting down a production line.”

In contrast, the independent claims do not require energy curtailment contracts, and the electricity price information from a trading system is broadcast to all the consumers. This is quite different from Malme’s system which requires and presupposes curtailment contracts between large energy suppliers and businesses that use significant amounts of energy. In the instant claims, curtailment contracts with the consumers are not necessary. Indeed, an advantage of the claimed approach is that any type of consumer, including for example small residential consumers, can make their own informed decisions whether to use or not use electricity during time periods when electricity is more costly.

GUSTAFSON  
Appl. No. 09/957,457  
March 20, 2008

Nor is any contract required by the claims for all the individual residential consumers to receive the electricity pricing information from the trading exchange. In Malme, curtailment notifications are only sent to selected ones of the LSEs or energy consumers all of which have existing curtailment contracts at the VUM and also have met some other agreed-upon criteria. In contrast, the distribution of pricing information in the claims does not require this kind of consumer selectivity or the need for formal contracts between the parties to be executed.

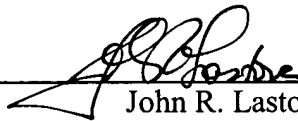
The anticipation rejection based on Malme should be withdrawn because Malme is not prior art and because Malme lacks multiple features recited in the independent claims.

The application is in condition for allowance. An early notice to that effect is earnestly requested.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_

  
John R. Lastova  
Reg. No. 33,149

JRL:maa  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100